

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,  
Plaintiff

:

:

No. 1:CV-00-0895

v.

:

(Magistrate Judge Smyser)

ROBERT W. MEYERS, et al.,  
Defendants

:

:

EXHIBITS IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

FILED  
HARRISBURG  
JUL 10 2001  
MARY E. D'ANDREA, CLERK  
Per DEPUTY CLERK

D. MICHAEL FISHER  
Attorney General

By: GREGORY R. NEUHAUSER  
Senior Deputy Attorney General

SUSAN J. FORNEY  
Chief Deputy Attorney General  
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL  
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Harrisburg, PA 17120  
717-787-8106

DATE: July 10, 2001

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\* IN FORMAT TO BE USED BY A PRISONER IN FILING A CIVIL RIGHTS COMPLAINT

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BZ-2761

(Inmate Number)

TERRANCE MONTAGUE

(Name of Plaintiff)

SCI-ROCKVIEW,  
Box A, Bellefonte, PA 16823-0820  
(Address of Plaintiff)

VS.

ROBERT. W. MEYERS, ROBERT S. BITNER,  
DAVID J. WAKEFIELD, TERRY L. WHITMAN,  
JACK M. ALLAR, LARRY LIDGETT,  
LT. DECKER, MAJOR YANCEY.  
JEFFREY A. RACKOVAN

1 : CV 00-0895

(Case Number)

COMPLAINT

FILED  
SCRANTON

MAY 18 2000

PER JMP  
DEPUTY CLERK

TO BE FILED UNDER: 42 U.S.C. §1983 - STATE OFFICIALS

I. Previous Lawsuits

A. If you have filed any other lawsuits in federal court while a prisoner please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

MONTAGUE VS. ENGLISH ET AL CASE NUMBER CA 99-158

II. Exhaustion of Administrative Remedies

A. Is there a grievance procedure available at your institution?  
X Yes        No

B. Have you filed a grievance concerning the facts relating to this complaint? X Yes        No

If your answer is no, explain why not \_\_\_\_\_

C. Is the grievance process completed? X Yes        No

5-18-  
①

1a

### III. Defendants

- A. Defendant Robert W. Meyers employed as the Superintendant at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- B. Defendant Robert S. Bitner employed as a member of the Central Office Review Committe (CORC) at SCI-Camp Hill, PA 17001-0598
- C. Defendant David J. Wakefield employed as Deputy Superintendant at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- D. Defendant Terry L. Whitman is employed as Deputy Superintendant at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- E. Defendant Jack Allar is employed as Unit Manager at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- F. Defendant Larry Lidett is employed as Health Care Administrator at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- G. Defendant Lt. Decker is employed as Block Lieutenant at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- H. Defendant Major Yancy is employed as Major of the guards at SCI-Rockview, Box A, Bellefonte, PA 16823-0820
- I. Defendant Jeffert Rackovan is employed as Grievance Coordinator at SCI-Rockview, Box A, Bellefonte, PA 16823-0820

### IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes.)

1. The Department of Corrections (D.O.C.) has put out a Policy Statement, Policy Subject: Smoking in Department of Corrections Buildings and Facilities, Policy Number: 15.3.6, Date of issue: 5/20/94, Effective Date: 8/22/94.
2. SCI-Mahanoy put out a Policy Statement, Policy Subject Institutional Smoking Policy - SCI-Mahanoy, Policy Number: 15.3.6 Mah1, Date of issue: 8/1/94, Effective Date: 8/22/94, V. Policy "... When these preferences conflict, the preferences of the nonsmoker shall prevail. The right of an individual to protect his or her health shall take precedence over an individual's desire to smoke. Smoking shall be permitted/prohibited as specified herein...;" VI. Procedures " 3. ...inmate individually occupied cells/rooms or double cells/rooms as follows: a. Unit Managers or staff responsible for assignment of inmates to cells/rooms shall make a determination of the inmate's smoking and non-smoking preference prior to initiating the placement and upon arrival at the facility.; b. Every attempt shall be made to honor inmates' smoking preference. Inmates who are nonsmokers may be housed in a cell/room with another nonsmoking inmate. In the event the nonsmoking inmate requests to be assigned with a specific

inmate who is a smoker, his/her request may be honored provided there are no overriding security concerns. This request shall be documented in the DC-15, waiving his/her rights to cell/room with a nonsmoker: c. Nonsmoking inmates currently assigned to a cell/room with a smoking inmate may request to be reassigned to another cell/room. The Unit Manager or staff responsible for assignment will establish a waiting list for these moves. Actual cell/room reassignments shall be based on availability, appropriateness of cell/room mates, an inmate's health condition which may be aggravated by ETS and the inmate's position on the list.

3. That plaintiff does not smoke, had a respiratory disease (Asthmas) and uses an inhaler which he gets as part of his medical treatment here at SCI-Rockview.

4. On/before 12/27/99 plaintiff told and/or wrote to Larry Lidgett, Major Yancey, Mr. Kushwara, Lt. Solete, and Mr. Duck, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, but no action was taken.

5. On 12/28/99 plaintiff filed an Official Inmate Grievance #ROC0768-99 to the Grievance Coordinator, Mr Jeffrey Rackovan, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, Deputy Wakefield, Mr. Whitman, Major Yancy, and the Unit Manager, Mr. Duck, were sent a copy and/or make aware of these proceedings, plaintiff was moved from Building A and no other action was taken.

6. On/before 2/6/00, while residing on back on Building A in cell #518, plaintiff from the call-out found out that a inmate/smoker was scheduled to move into his cell, and told and/or wrote to Larry Lidgett, Lt. Decker, Major Yancey and the new Unit Manger of Building A, Mr. Allar, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, but no action was taken.

7. On 2/7/00 this inmate/smoker was moved into plaintiff's cell.

8. On 2/7/00 plaintiff filed an Official Inmate Grievance #ROC-0073-00 to the Grievance Coordinator, Mr Jeffrey Rackovan, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, Deputy Wakefield, Mr. Whitman, Mr. Allar, Mr. Zurybida were sent a copy and/or make aware of these proceedings, but no action was taken.

9. On 2/29/00 plaintiff moves to a cell with an inmate who does not smoke and will give up the bottom bunk after tiering search, where plaintiff is not only needs and/or has a "medical non-smokers status," but also has a medical "bottom bunk status".

10. On/about 2/29/00 plaintiff filed a Grievance Appeal to Superintendent, R. W. Meyers, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, but no action was taken.

11. On 3/2/00 plaintiff filed a Grievance Appeal to the Central Office Review Committee (CORC), Robert S. Bitner, that he did not smoke, had a respiratory disease (Asthmas) and uses an inhaler, that the inmate put in his cell was a smoker, and was causing him breathing problems, but no action was taken.

V. RELIEF

(State briefly exactly what the court to do for you, Make no legal arguments. Cite no cases or statutes.)

1. Place an Injunction or Restraining Order against defendant and/or the Department of Corrections (D.O.C.) to prevent them from putting another smoker in plaintiff's cell.
2. Award plaintiff monetary damages of \$1000.00 per day, from each defendant, for each day (2/5/00 - 2/29/00) defendants kept him in that cell with a smoker for mental and physical pain and suffering.
3. Award plaintiff a monetary sum of \$10,000.00 to punish defendants. AND JURY DEMANDED.

Signed this 8th day of May, 1900.

Dewane Montague  
(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

5/8/00  
(Date)

Dewane Montague  
(Signature of Plaintiff)

NEW FACTS

12. ON 4/27/00 I GOT OUT OF THE HOLE AND WAS PLACE ON-A BLOCK IN CELL 332 WITH ANOTHER HEAVY SMOKER AND AGAIN IT IS CAUSING ME BREATHING PROBLEMS WHERE I AM CONSTANTLY AT SICK-CALL, AND HAVE AGAIN FILED A GRIEVANCE.

*T. Fischhauser*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**TERRANCE MONTAGUE,**  
Plaintiff

:  
: No. 1:CV-00-0895

v.

:  
(M.J. Smyser)

**ROBERT W. MEYERS, et al.,**  
Defendants

:

**FILED**  
HARRISBURG, PA

JUL 31 2000

MARY E. D'ANDREA, CLERK  
Per \_\_\_\_\_  
Deputy Clerk

**ANSWER**

Defendants, by their attorneys, hereby submit this answer to the complaint.

**FIRST DEFENSE**

The numbered allegations of the Statement of Claim section of the complaint are answered as follows:

1. ADMITTED.
2. ADMITTED.
3. DENIED.
4. ADMITTED in part; DENIED in part. ADMITTED that plaintiff wrote to the individuals listed. DENIED that no action was taken.
5. ADMITTED in part; DENIED in part. DENIED that no action was taken. The remainder of this numbered paragraph is ADMITTED.
6. DENIED.
7. ADMITTED.
8. ADMITTED in part; DENIED in part. DENIED that no action was taken. The remainder of this numbered paragraph is ADMITTED.

*5a*

9. ADMITTED in part; DENIED in part. ADMITTED that plaintiff moved to a cell with an inmate who does not smoke. The remainder of this numbered paragraph is DENIED.

10. ADMITTED in part; DENIED in part. DENIED that no action was taken. The remainder of this numbered paragraph is ADMITTED.

11. ADMITTED in part; DENIED in part. DENIED that no action was taken. The remainder of this numbered paragraph is ADMITTED.

12. ADMITTED in part; DENIED in part. ADMITTED that on April 27, 2000 plaintiff was placed on A-Block, Cell 332 with an inmate of plaintiff's choosing. The remainder of this numbered paragraph is DENIED.

13. DENIED.

14. DENIED.

15. ADMITTED.

16. DENIED.

17. DENIED.

#### SECOND DEFENSE

The complaint fails to state a claim upon which relief may be granted.

#### THIRD DEFENSE

At no time have defendants, either individually or in concert with others, deprived or sought to deprive plaintiff of any rights, privileges or immunities secured to him by the Constitution or laws of the United States.

#### FOURTH DEFENSE

At all material times, defendants have acted with a reasonable good-faith belief in the lawfulness of their actions and are entitled to immunity therefor.

**FIFTH DEFENSE**

Plaintiff is entitled to no relief whether compensatory or equitable.

**WHEREFORE**, the complaint should be dismissed with prejudice.

**Respectfully submitted,**

**D. MICHAEL FISHER**  
**Attorney General**

By:

*Gregory Neuhauser*  
**GREGORY R. NEUHAUSER**  
**Senior Deputy Attorney General**

**SUSAN J. FORNEY**  
**Chief Deputy Attorney General**  
**Chief, Litigation Section**

**OFFICE OF ATTORNEY GENERAL**  
15th Floor, Strawberry Square  
Harrisburg, PA 17120  
717-787-8106

**DATE: July 31, 2000**

*7a*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,  
Plaintiff : CIVIL NO. 1:CV-00-0895  
v.  
ROBERT W. MEYERS, et al  
Defendants : (Magistrate Judge Sayser)

SUPPLEMENTAL PLEADING

Plaintiff Terrance Montague with leave of Court files the following Supplemental Pleadings.

DEFENDANTS

1. Defendant Martin Horn is the Commissioner for the Pennsylvania Department of Correction at 2626 Lisburn Road Camp Hill, PA 17001-0598

2. All defendants are sued in their individual and official capacity.

FACTS

3. On 4/27/00, plaintiff was transferred to SCI-Waymart, a Mental Health Facility for a Mental Health Evaluation.

4. Plaintiff was transferred without his knowledge or consent.

5. At the time of Plaintiff's transfer, he was not under the care or treatment of any mental health personnel.

6. At the time of plaintiff's transfer, he did not have a mental break down or any other type of mental episode.

7. At the time of plaintiff's transfer, he was in full control of his mental faculties.

8. While at SCI-Waymart plaintiff asked a staff member who was looking through plaintiff's record why was plaintiff at SCI-Waymart and was told that the staff member did not know, but that for some reason plaintiff was listed for a Mental Health Evaluation.

9. When plaintiff asked who had ordered said evaluation, he was told that it was ordered by Martin Horn.

10. Plaintiff transfer to SCI-Waymart was in retaliation for the filing of the instant action.

#1. Plaintiff's transfer to SCI-Waymart, a mental health facility, cause plaintiff to anguish over why he was sent there, that defendants intended to keep him there, and that defendants intended to give him treatments that he did not want or need.

CLAIMS FOR RELIEF

#2. Plaintiff is entitled to relief against defendants for transferring him to SCI-Waymart in retaliation for the filing of the instant action in violation of plaintiff's Due Process, a Six Amendment right.

#3. Plaintiff is entitled to relief against defendants for causing him mental pain and suffering in violation of cruel and unusual punishment, an Eighth Amendment right.

#4. Plaintiff seeks declaratory and monetary judgement in the amount of \$300.00 a day from each defendant for each day plaintiff was at SCI-Waymart.

Dated: 2-27-01

Terrance Montague  
Terrance Montague, #2-2769  
Box A, Bellefonte, PA  
16823-0620

9a

4 february  
3-12-01

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,  
Plaintiff

v.

ROBERT W. MEYERS, et al.,  
Defendants

FILED  
HARRISBURG  
MAR 12 2001  
No. 1:CV-00-0295  
MARY E. D'ANDREA, CLERK  
Per DEPUTY CLERK  
*[Handwritten signature]*

ANSWER TO SUPPLEMENTAL COMPLAINT

Defendants, by their counsel, hereby answer plaintiff's supplemental complaint filed March 1, 2001.

FIRST DEFENSE

The numbered allegations of the supplemental complaint are answered as follows:

1. DENIED.
2. This numbered paragraph contains conclusions of law to which NO RESPONSE is required; to the extent they are deemed factual, they are DENIED.
3. ADMITTED in part; DENIED in part. ADMITTED that on December 27, 2000, plaintiff was transferred to SCI-Waymart for assessment of needs and treatment possibilities. DENIED that SCI-Waymart is a "mental health facility" inasmuch as that term is not defined.
4. ADMITTED in part; DENIED in part. ADMITTED that plaintiff was transferred without his consent. Defendants are WITHOUT KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegation that the transfer was without plaintiff's knowledge to be able to admit it; therefore, it is DENIED.
5. ADMITTED in part; DENIED in part. ADMITTED that at the time of plaintiff's transfer he was not actively seeking or participating in mental health treatment options.

10a

DENIED that none was available to plaintiff. DENIED is the implication that none was appropriate or warranted for plaintiff. DENIED also is the implication that a needs assessment was inappropriate.

6. ADMITTED in part; DENIED in part. ADMITTED that at the time of plaintiff's transfer he did not have a mental breakdown or other type of acute mental episode. DENIED is the implication that a needs assessment was inappropriate.

7. DENIED.

8. Defendants are WITHOUT KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of this numbered allegation to be able to admit it; therefore, it is DENIED.

9. Defendants are WITHOUT KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of this numbered allegation to be able to admit it; therefore, it is DENIED.

10. DENIED.

11. DENIED.

12. This numbered paragraph contains conclusions of law to which NO RESPONSE is required; to the extent they are deemed factual, they are DENIED.

13. This numbered paragraph contains conclusions of law to which NO RESPONSE is required; to the extent they are deemed factual, they are DENIED.

14. This numbered paragraph contains conclusions of law to which NO RESPONSE is required; to the extent they are deemed factual, they are DENIED.

The remainder of the supplemental complaint contains conclusions of law to which NO RESPONSE is required; to the extent they are deemed factual, they are DENIED.

**SECOND DEFENSE**

The complaint fails to state a claim upon which relief may be granted.

**THIRD DEFENSE**

At no time have defendants, either individually or in concert with others, deprived or sought to deprive plaintiff of any rights, privileges or immunities secured to him by the Constitution or laws of the United States.

**FOURTH DEFENSE**

At all material times, defendants have acted with a reasonable good-faith belief in the lawfulness of their actions and are entitled to immunity therefor.

**FIFTH DEFENSE**

Plaintiff is entitled to no relief whether compensatory or equitable.

**WHEREFORE**, judgment should be entered in favor of defendants.

Respectfully submitted,

**D. MICHAEL FISHER**  
Attorney General

By:

*Gregory Neuhauser*  
**GREGORY R. NEUHAUSER**  
Senior Deputy Attorney General

**SUSAN J. FORNEY**  
Chief Deputy Attorney General  
Chief, Litigation Section

**OFFICE OF ATTORNEY GENERAL**  
15th Floor, Strawberry Square  
Harrisburg, PA 17120  
717-787-8106  
**DATE: March 12, 2001**

12a

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE,  
PLAINTIFF

VS  
NO. 1:CV-00-0895

ROBERT W. MEYERS, ET. AL.,  
DEFENDANTS

DEPOSITION OF: TERRANCE MONTAGUE

TAKEN BY: DEFENDANTS

BEFORE: LISA A. HANSELL, REPORTER  
NOTARY PUBLIC

DATE: APRIL 27, 2001, 9:45 A.M.

PLACE: SCI ROCKVIEW  
ROUTE 26  
BELLEFONTE, PENNSYLVANIA

APPEARANCES:

TERRANCE MONTAGUE, PRO SE  
FOR - PLAINTIFF

OFFICE OF ATTORNEY GENERAL  
BY: GREGORY R. NEUHAUSER, SENIOR DEPUTY  
ATTORNEY GENERAL  
FOR - DEFENDANTS

1                   TERRANCE MONTAGUE, called as a witness, being  
2 sworn, testified as follows:

3

4                   DIRECT EXAMINATION

5

6 BY MR. NEUHAUSER:

7                 Q           Mr. Montague, we met before we went on the  
8 record, but let me, for the record, just reintroduce  
9 myself. I'm Mr. Neuhauser from the Attorney General's  
10 Office, and I represent the staff here at Rockview who you  
11 have filed suit against in Federal Court. Today at this  
12 deposition I would like to ask you some questions about your  
13 claims in that lawsuit and any other information that you  
14 might have about the incidents and the facts regarding that  
15 lawsuit. I'll also ask you some questions about your  
16 background and other information like that. If there is any  
17 question that you don't understand or you don't hear me ask  
18 it, just tell me, and I'll repeat it or rephrase it or try  
19 to change the question somehow so that you do understand it  
20 and hear me. Is that agreeable to you?

21               A           Yes, sir.

22               Q           You understand that?

23               A           Yes, sir.

24               Q           And you understand that you're under oath to  
25 tell the truth just as if we were in a court of law and the

1 Judge were there and you were sworn in to tell the truth?

2 A Yes, sir.

3 Q And I need to ask you if you're under any  
4 medication at the present time that would interfere with  
5 your ability to hear me or understand the question?

6 A No, sir.

7 Q How old are you, Mr. Montague?

8 A Twenty-eight.

9 Q And where are you from originally?

10 A Philadelphia.

11 Q Which part of Philadelphia?

12 A West Philly.

13 Q West Philly? How long have you been here at  
14 Rockview?

15 A I was here since '99.

16 Q When I looked at the records, it looked like  
17 you came in in or about May of 1999. Does that sound right  
18 to you?

19 A Yes, sir.

20 Q Where did you come from, what institution were  
21 you transferred from?

22 A Greensburg.

23 Q SCI Greensburg?

24 A Yes, sir.

25 Q And how long were you at Greensburg

1 approximately?

2 A I can't recall right offhand.

3 Q Do you remember when you first came into the  
4 State system?

5 A Yes.

6 Q What year was that?

7 A It was like in '92.

8 Q In which institution were you first  
9 incarcerated in in 1992?

10 A I went from Gratersford to Camp Hill. Then I  
11 went to the previous ones from there.

12 Q I'm just speaking of the State institutions  
13 now, not Philadelphia County or not any youth detention  
14 centers, just the State institutions.

15 A Yes. I went from Gratersford to Camp Hill,  
16 then from Camp Hill to Frackville and a few other ones from  
17 there.

18 Q And at some point you ended up at Greensburg;  
19 right?

20 A Yes.

21 Q But you're not exactly sure when?

22 A No, sir.

23 Q And what sentence are you serving?

24 A Right now, it's 4 to 15.

25 Q And what is that a conviction for?

1 A Aggravated assaults.

2 Q Ag assault?

3 A Aggravated assaults, possession of an  
4 instrument of a crime and maybe some other ones. I can't  
5 recall right offhand.

6 Q Do you know what your minimum date is or was?

7 A I think it was in '94, if I recall correctly.

8 Q And the maximum date?

9 A 2007.

10 Q Have you applied for parole since your minimum  
11 date expired?

12 A Yes, sir.

13 Q How many times?

14 A A few.

15 Q A few?

16 A Yes.

17 Q Was it every year since '94?

18 A No, because on some occasions the Parole Board  
19 gave me two year hits, some gave me nine, and some was  
20 eighteen.

21 Q Do you have a parole application pending at  
22 the present time?

23 A Yes. I see them in June as we speak.

24 Q You're scheduled to see the parole  
25 representative in June?

1 A Yes, sir.

2 Q The last time your parole was denied, do you  
3 recall what they told you you needed to do to improve your  
4 chances for parole, what they expected of you?

5 A Well, they stated to stay misconduct free, to  
6 get a jail recommendation, to make sure I was under  
7 prescribed medication. There was a few other stipulations,  
8 but I can't recall right now.

9 Q Okay. That's fine.

10 A If you would like, I can send you a copy of  
11 the green sheet because I do have it back in my cell in the  
12 RHU.

13 Q Did the Parole Board say anything to you about  
14 programs, getting involved in any programs that you needed  
15 to complete, like, for instance, drug and alcohol treatment  
16 or sex offender treatment or anything like that?

17 A The Parole Board didn't. My unit manager when  
18 I was down at Greensburg told me that they wanted me to go  
19 to stress and anger, and I was and ended that. Then I went  
20 on a few other programs of my own, you know, the NA, the AA,  
21 and some other ones that I volunteered for myself.

22 Q Okay. Have you completed the stress and anger  
23 program?

24 A I was in the process, but I went to the RHU so  
25 I never. . .

1 Q Okay. How about the drug and alcohol  
2 treatment, did you complete that program?

3 A No, sir.

4 Q You said you're in the RHU at the present  
5 time?

6 A Yes, sir.

7 Q What misconduct report did you receive?

8 A Well, I have a copy here if you would like to  
9 look at it.

10 Q That's okay. You can just tell me what you  
11 remember.

12 A An officer stated that I had threatened  
13 another officer about my legal mail.

14 Q How long have you been in the RHU at the  
15 present time?

16 A It's 45 or 46 days.

17 Q That's the sentence you got or that's how long  
18 you've been in?

19 A That's how long I've been in there. My  
20 sentence is 90 days.

21 Q So you're about halfway?

22 A Yes.

23 Q If you have to serve the whole 90?

24 A If I have to serve the whole 90 it will be a  
25 little longer, but I'm due to get out this week.

1 Q Okay. When you say due to get out, why do you  
2 assume that you're going to get out?

3 A Unlike other State Institutions, here at  
4 Rockview if you are in the RHU if you do half of your  
5 sentence and if you're doing good in there, then they let  
6 you out at halftime. But if you're in there cutting up or  
7 messing up, giving officers problems, they make you do the  
8 whole sentence.

9 Q So you're due to see the PRC this coming week?

10 A I seen them yesterday because they come around  
11 every Thursday in RHU, and they told me that I'm eligible to  
12 come out after Saturday, which would be like Monday or  
13 Tuesday.

14 Q But they didn't tell you whether you would  
15 actually come out?

16 A Yes, they did. They tell me I will be out  
17 sometime next week.

18 Q Okay. And then which cellblock or which  
19 housing unit will you go back to at that point after you  
20 come out of the RHU?

21 A Most likely, they're going to send me to  
22 B South.

23 Q And why is that?

24 A That's a nonsmoking block.

25 Q Why do you know that you're going to go to

1           B South?

2           A           Well, because the unit manager for the  
3 nonsmoking block is part of PRC and --

4           Q           Who is that?

5           A           Mr. Kerstetter.

6           Q           So tell me if I'm wrong, but what I think I'm  
7 hearing is that Mr. Kerstetter was on the PRC that you met  
8 with yesterday?

9           A           Yes.

10          Q           And he told you that when you get out of the  
11 RHU next week you're most likely going to go to B South, the  
12 nonsmoking block?

13          A           Yes.

14          Q           Is that right?

15          A           Yes.

16          Q           Do you have any information to dispute what  
17 Mr. Kerstetter told you, that you're going to go to the  
18 nonsmoking block?

19          A           No, because previous to that -- they come  
20 around every Thursday and I talked to a man -- Dr. Gaertner  
21 had told me that Mr. Allar don't want me back on A Block.

22          Q           He did not or he did?

23          A           He did not want me back on A Block, and he  
24 said Mr. Allar felt it was time for me to change the block.  
25 That's when I talked to Mr. Kerstetter and asked him about

1 B South again.

2 Q And Mr. Kerstetter said you could go to  
3 B South?

4 A Yes. He had brought me a smoking agreement  
5 that they have for the nonsmoking block that I had to sign,  
6 and I signed it, and my counselor had it.

7 (Contract for Residence on Smoke Free Unit  
8 marked as Montague Exhibit 1.)

9 BY MR. NEUHAUSER:

10 Q Mr. Montague, I'm going to show you what we've  
11 marked as Deposition Exhibit 1 and ask you if that is the  
12 Contract for Residence on the Smoke Free Block that you just  
13 mentioned a minute ago that you signed?

14 A Yes, sir.

15 Q Is that your signature --

16 A Yes, that is.

17 Q -- at the bottom of the page --

18 A Yes, sir, it is.

19 Q -- where it says inmate's signature and date?

20 A Yes, sir.

21 Q So your testimony is that you were presented  
22 with this contract and you signed it as an agreement --

23 A Yes.

24 Q -- with the institution to go to the smoke  
25 free block?

1           A           Yes.

2           Q           Had you ever been presented one of these  
3 contracts before April of this year while you were here at  
4 Rockview?

5           A           There was another time that I have been  
6 presented one, and I had went over there and talked to  
7 Mr. Kerstetter and Sergeant Rodriguez, who was the sergeant  
8 of the nonsmoking block, and I had talked to Mr. Kerstetter  
9 and Sergeant Rodriguez and I told them due to the fact of me  
10 being in a single cell by myself with no smoker in it, you  
11 know, I would like to stay where I'm at only due to the fact  
12 of I'm in a cell by myself and it wouldn't jeopardize me  
13 coming to B South and being in with a smoker because they  
14 still had smokers over there that's on the block.

15           I do have a few misconducts with me today from  
16 inmates that was on the nonsmoking block that signed an  
17 agreement that got caught with tobacco products and  
18 everything, and I told Mr. Kerstetter I didn't want to  
19 jeopardize my health no more than what it already is by  
20 having me come over there and being put in a cell with a  
21 smoker. I'm not no snitch, you know, and I'm not going to  
22 tell on no one that's smoking.

23           Q           Let me see if I can back up a minute and  
24 understand what you just told me. You were on A Block at  
25 some point with Mr. Allar?

1 A Yes.

2 Q Before you went into the RHU; is that right?

3 A Yes.

4 Q And Mr. Allar or somebody on A Block presented  
5 you with one of these contracts to go to this nonsmoking  
6 block, but you decided not to do that because you had a  
7 single cell on A Block?

8 A Yes.

9 Q Is that right?

10 A I signed one in front of Mr. Allar and  
11 Lieutenant Nolt (phonetic), which is now the lieutenant of A  
12 Block, and I signed it.

13 Q But you decided not to go to B South?

14 A I only decided not to go to B South when the  
15 inmates over there were getting caught smoking in the cells,  
16 and I felt since medical had already given me a single cell  
17 until they could move me to the nonsmoking block I figured  
18 my health was already being jeopardized, why go over there  
19 and be put in a cell, in a doubled up cell, with an inmate  
20 that is sneaking a smoke when there ain't supposed to be no  
21 smoking on the block already. Now I'm on A Block and in a  
22 single cell, like the medical department recommended, I'm in  
23 less jeopardy -- I'm less jeopardized now than what I am on  
24 B South in a cell with a person that smokes.

25 Q Let me see if I understand. A Block is a

1           smoking block; right?

2           A         Yes, but it ain't supposed to be.

3           Q         But at the time you were there it was a  
4           smoking block?

5           A         Yes.

6           Q         And you had a single cell on A Block?

7           A         Yes.

8           Q         And you would rather have stayed there on  
9           A Block in the single cell than go over to B South, the  
10          nonsmoking block, and take the chance of being double celled  
11          with somebody who might be sneaking smokes. Is that what  
12          you're telling me?

13          A         Exactly what I'm telling you is due to the  
14          fact that I'm happy in a cell by myself and no cell mate --

15          Q         On A Block?

16          A         Yes. At the time medical cleared me to have a  
17          single cell until the administration of Rockview moved me  
18          over to the nonsmoking block. They put me in a single cell.

19          Q         But what I don't understand is when you say  
20          until you got clearance to go to B South. Well, when they  
21          gave you the contract to say now you can go to B South if  
22          you sign this, why wouldn't you do that?

23          A         Before then you didn't need no contract.

24          Before then you didn't need no contract to go to B South.  
25          If you didn't smoke, you were supposed to go over there.

1 plain nonsmokers.

2 Q Do you know that about all the inmates in  
3 B South or you just know some of them?

4 A Mr. Neuhauser, I could say that about a lot of  
5 the inmates in this jail because -- I'm not bragging when I  
6 say this, but I'm an inmate that everyone knows, and I have  
7 a reputation in this institution, and there's not nothing  
8 that I want to know that I can't find out.

9 Q Okay. Do you remember when it was that you  
10 were presented with one of these contracts to go to B South  
11 and you decided not to go?

12 A I can't exactly recall the exact date.

13 Q Okay. Let's see if we can pin it down. It,  
14 obviously, was after May of '99 when you got here; right?

15 A It was way after that.

16 Q Okay. And it would have been before you went  
17 into the RHU this past time, approximately 45 days ago;  
18 right?

19 A Yes.

20 Q It would have been in that period of time,  
21 between 99 and --

22 A It was a little after I came back from SCI  
23 Waymart.

24 Q If I recall, you went to Waymart in December  
25 of 2000?

1 A Yes.

2 Q Does that sound right to you?

3 A Yes.

4 Q Just this past December?

5 A Yes, December of 2000. I did not come back to  
6 Rockview until January 11th.

7 Q Okay. Of this year?

8 A Yes.

9 Q So it was shortly after January 11th --

10 A Yes.

11 Q -- that you're saying you were given this  
12 opportunity to go to B South and you chose not to?

13 A I didn't refuse to go.

14 Q Well, you decided it was better to stay on  
15 A Block for you?

16 A What I decided was that it was best for me to  
17 stay in a cell like the medical department had recommended  
18 where I'm not exposed to secondhand smoke to aggravate my  
19 asthma.

20 Q And that was on A Block?

21 A Yes. And I have documents here where it's  
22 stated that if they don't put me on the nonsmoking block to  
23 at least house me in a single cell, you know, and that's  
24 what they did.

25 Q Did you have a single cell before you went up

1 to Waymart on A Block or only after you came back?

2 A Well, I had been in a cell by myself due to  
3 the fact that my cellly had moved out, and they had me in  
4 there ever since.

5 Q What I'm trying to find out is when that  
6 happened. Did you have a single cell before you went to  
7 Waymart or was it after you came back?

8 A Well, I was in the cell by myself before I  
9 went to Waymart for awhile because Mr. Allar and myself had  
10 talked and I asked him being that there was no other  
11 nonsmokers on this block, you know, let me stay in the cell  
12 by myself unless you find someone that come on this block  
13 that's a nonsmoker. I don't have no problem with having him  
14 come in the cell.

15 Q And Mr. Allar was able to do that, was able to  
16 give you a single cell?

17 A Well, he, himself, was able to give me a  
18 single cell, but he agreed to that. He didn't want to but  
19 --

20 Q Well, how long -- for how long of a period of  
21 time do you think you had a single cell before you went to  
22 Waymart?

23 A I can't recall right offhand.

24 Q That's okay. Was it just a few days, was it a  
25 couple of weeks?

1                   that. So to give you really an exact I couldn't really  
2 say. All I can do is, if you want, is send you copies of  
3 all my commissary receipts that I have, and that could let  
4 you see from there.

5                   Q                Okay. But is it fair to say that you  
6 purchased cigarettes more than one time while you were on  
7 A Block? I mean, it wasn't just a one time thing, you would  
8 purchase them on --

9                   A               Not a constant basis.

10                  Q               Not a constant basis, but you did it more than  
11 one time?

12                  A               It was more than once. It was more than once,  
13 but it was only like maybe one or two packs that I would get  
14 for the individual that was making cards for my mom or my  
15 kids. You know, I wouldn't get them for no other reason.  
16 And a lot of times I would ask these individuals would they  
17 settle for food because I really didn't like to buy  
18 cigarettes due to the fact of me not smoking, but, you know,  
19 by these individuals smoking -- and this is how a lot of  
20 dudes survive in jail by hustling -- I had to get what they  
21 wanted, you know, in order to get what I wanted.

22                  ( Inmate's Request to Staff Member marked as  
23 Montague Exhibit 2.)

24 BY MR. NEUHAUSER:

25                  Q               Mr. Montague, I'm going to show you what we've

1 marked as Deposition Exhibit 2 and ask you if that's your  
2 handwriting?

3 A Yes. On 2/23 I did write that.

4 Q That's your signature there in the lower  
5 right-hand corner?

6 A And that's when I was in 102 because I was in  
7 there since I come back from Waymart and I was up near the  
8 door right --

9 Q On A Block?

10 A Yes. And right there I didn't have to worry  
11 about breathing in any tobacco smoke or anything because I  
12 was right there near the door and the door stayed open the  
13 majority of the time whereas though it helped me breathe a  
14 lot better.

15 Q Okay.

16 A And that's why when I went to Mr. Kerstetter I  
17 wrote this request slip here because at the time a lot of  
18 individuals was getting caught smoking in the cells whereas  
19 though they wasn't supposed to.

20 Q I understand that. You told me that before.  
21 I just wanted to ask you if this was your handwriting and  
22 this was the request to Mr. Kerstetter.

23 A Yes, sir.

24 Q Okay. Now, let me see if I read this right,  
25 and you tell me if I'm wrong.

1 A Do you want me to read it to you?

2 Q Sure.

3 A Mr. Kerstetter, I would like to stay on  
4 A Block only because I'm in a single cell and don't have to  
5 worry about me getting a celly that smoke.

6 Q Okay.

7 A Thank you very much, Terrance Montague.

8 Q Are you pronouncing Montague?

9 A Yes.

10 Q I'm sorry. I've been calling you Mr.  
11 Montague. You should have told me. You should have told me  
12 you pronounce it Montague. Okay. Let me see if I  
13 understand your basic claim in this lawsuit, and you tell me  
14 if I'm wrong or you tell me where I am off base or I am not  
15 correct in the way I say it. Okay? You basically say that  
16 because of your asthma condition you should have been on a  
17 nonsmoking block the whole time you were here?

18 A Yes. From day one when this jail received me,  
19 when I first come in the door, I let them know I didn't  
20 smoke, I have a nonsmoking status along with a bottom bunk  
21 status. It was verified in my medical records, and I was  
22 showing Mr. Allar, along with other staff members here that  
23 was high up in rank that could do things about it, and they  
24 still failed to do anything about it.

25 Q Did any of those people explain to you why you

1                   treated for asthma to keep your lungs clear. You know,  
2                   they're not going to prescribe theophylline or inhalers to  
3                   an individual that don't have asthma.

4                   Q                 Had you always been on A Block here at  
5                   Rockview before you went into the RHU?

6                   A                 No, sir. When I first come, I was on D Block.

7                   Q                 And who was the unit manager there?

8                   A                 Mr. Morningstar.

9                   Q                 Morningstar?

10                  A                 Yes.

11                  Q                 Did you complain to him about the smoke on  
12                  D Block?

13                  A                 Well, over there I was in a cell with a celly  
14                  that didn't smoke, and by me being on 3 Back it was okay  
15                  because there wasn't no smoking up there. You know, it  
16                  wasn't like on A Block whereas though I'm down on the bottom  
17                  tier exposed to it all. On D Block in the back, you know,  
18                  there is not too much traffic back there like there is on  
19                  A Block.

20                  Q                 What tier were you on on D Block?

21                  A                 I was on 3 Back.

22                  Q                 That's the third tier?

23                  A                 Yes, in the back.

24                  Q                 How many tiers are there on D Block?

25                  A                 Five. There is five on D Block, and there's

1 five tiers on A Block.

2 Q So when you were on D Block, you were on the  
3 third tier?

4 A In the back.

5 Q In the back?

6 A Yes.

7 Q When you were on A Block, you were on the  
8 first tier?

9 A Yes, and on 2 Front also. That was on A  
10 Block. I was on A Block on 2 Front, and then they put me on  
11 3 Back, also with smokers. Then they put me on 1 Back on  
12 A Block also.

13 Q Okay. Other than D Block and A Block, were  
14 you on any other blocks here at Rockview?

15 A No, sir.

16 Q Before you went into the RHU?

17 A No, sir. D and A Block was the only two  
18 blocks.

19 Q How long were you on D, do you remember?

20 A I have my records here to verify. I can't  
21 recall right offhand.

22 Q All right. You came here in the spring of  
23 '99. Do you think you were on D Block for most of '99 or  
24 all of '99?

25 A That was -- I can't really say because I'd be

1       lying to you if I do that, and I don't want to do that.

2       Q           I don't want you either to do that. I just

3       want you to tell me what you can remember. Did you have to

4       go to the RHU at any time between 1999 when you first got

5       here and this present term in the RHU?

6       A           On D Block -- yes, I went to the RHU a few

7       times on D Block for numerous tickets.

8       Q           Is there smoking in the RHU?

9       A           Yes, at the time.

10      Q           But you had a single cell in the RHU; right?

11      A           No, sir.

12      Q           You had a cell mate?

13      A           Yes.

14      Q           Did that cell mate smoke in the RHU?

15      A           No, no. I didn't have no cellies in RHU that

16       smoked. I would say fortunately.

17      Q           Do you remember when you went to A Block the

18       first time approximately?

19      A           No. I can't even give you the date, but I do

20       have records here that would help me.

21      Q           Okay. And the two unit managers on A Block

22       that you talked to while you were there about the smoking

23       issue were Mr. Duck and Mr. Allar?

24      A           Yes, sir.

25      Q           Anybody else? I mean any other unit

1 know, that's the best I can get out of it. I'm the only one  
2 up there that they felt shouldn't be there. I'm talking and  
3 talking, and I'm helping other individuals with legal work  
4 and everything. They're asking me why are you here. I'm  
5 asking them why am I here.

6 Q How long were you at Waymart?

7 A Maybe like 2 weeks to 3 weeks, which Waymart  
8 is a 6 to 9 month program. You can't come out no less than  
9 6 months, you know, and I was there -- they had been telling  
10 me, okay, well, don't cause no problems, we're going to  
11 hurry up and send you back, and they sent me back on  
12 1/11/2001. I believe I left from Rockview, if I recall  
13 correctly, 12/27.

14 Q 2000?

15 A Yes.

16 Q If those dates are right -- and I'm not saying  
17 that you're wrong. But if those dates are right, then you  
18 would have been at Waymart about three weeks?

19 A Yes. I have documentations of it.

20 Q Does that sound about right to you, you were  
21 there three weeks?

22 A Yes, because I left around the 27th. I know  
23 it was right after Christmas.

24 Q When did you have this conversation with  
25 Secretary Horn where you told him that he was a liar?

SUPT. ROCKVIEW

Fax: 814-355-6060

Apr 25 2001 15:37 P.02

**SCI ROCKVIEW**  
**CONTRACT FOR RESIDENCE ON SMOKE FREE UNIT**



1. TERRANCE MONTAGUE <sup>BL-2161</sup>, currently residing on A at SCI Rockview  
 (Inmate Name & DOC #) (Block)  
 request to live in the smoke free housing unit (BA) at SCI Rockview.

I agree to fully cooperate and adhere to the posted regulations/procedures, which include the following:

1. No smoking tobacco products will be allowed in any area of the unit, including cells.
2. Inmates residing on the smoke free unit will not be permitted to possess any smoking products on their person or in their cell. These items will be considered contraband.
3. Once assigned to the smoke free unit, the inmate will not voluntarily be transferred off the unit for at least six (6) months.
4. Violations of the above regulations will result in the issuing of misconducts, and removal from the unit.
5. Inmates removed from the smoke-free unit for violations will be returned to their previous unit unless determined otherwise by the unit team.
6. Inmates housed on the smoke free unit agree that smoking tobacco will not be purchased from the institution commissary.

I further understand and agree that all department and institution policies and procedures will remain in effect on the smoke-free unit.

TERRANCE MONTAGUE BL-2161  
 Inmate Name & Number (PRINT)

Chad E. Hahn  
 Counselor Name (PRINT)

Terrance Montague 4-13-01  
 Inmate Signature & Date

Chad E. Hahn - Takem  
 Counselor Signature & Date  
 4-13-01

EXHIBIT  
 Montague

36a

Fax: 814-355-6060

Apr 25 2001 10:39

P.02

SUPT. ROCKVIEW

DC-1354  
FEB 23 2001at Rockview  
Supt's Assistant's Office  
INMATE'S REQUEST TO STAFF MEMBERCOMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS

## INSTRUCTIONS

*Complete Items Number 1-7. If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently.*

1. TO: (NAME AND TITLE OF OFFICER)

Mr. Krestetter

2. DATE

2-23-01

3. BY: (INSTITUTIONAL NAME AND NUMBER)

TERRENCE NOOTAGUE #BZ-2761

4. COUNSELOR'S NAME

5. WORK ASSIGNMENT

Kitchen

6. QUARTERS ASSIGNMENT

A-102

7. SUBJECT: STATE COMPLETELY BUT BRIEFLY THE PROBLEM ON WHICH YOU DESIRE ASSISTANCE. GIVE DETAILS.

Mr. Krestetter,

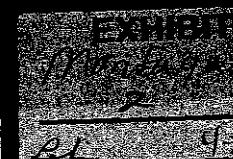
*I would like to stay on A-block only because I am in a single cell and don't have to worry about me getting a silly that smokes.**THANK YOU  
very much  
Diane Williams*

8. DISPOSITION: (DO NOT WRITE IN THIS SPACE)

*CIT / i, by 2/27/01* TO DC-14 CAR ONLY TO DC-14 CAR ONLY

STAFF MEMBER

370



# READING & SIGNING OF DEPOSITION

To be attached to the deposition of: Terrance Montague

taken on 4/27/2001 by reporter Lisa Hansell

in the matter of Terrance Montague vs. Robert W. Meyers, et. al.

PAGE	LINE	CHANGE OR CORRECTION AND REASON
PAGE 12	LINE 10	by me being in A CELL by myself with NO SMOKER.
PAGE 12	LINE 12	by me being ON A-BLOCK OR B-SOUTH MY LIFE IS IN DANGER.
PAGE 12	LINE 19	BEING ON A-BLOCK AND ON B-SOUTH WHICH IS SUPPOSED TO BE NON-SMOKING BLOCK MY HEALTH IS BEING JEOPARDIZED.
PAGE 12	LINE 7	I NEVER HAD A SINGLE CELL ON A-BLOCK I WAS JUST IN THERE BY MYSELF. <small>SINGLE CELL I DIDN'T GET ANYTHING</small>
PAGE 12	LINE 16	MEDICAL HAD RECOMMENDED THAT I BE EITHER MOVED TO THE NON-SMOKING BLOCK OR GIVE ME A
PAGE 12	LINE 22	I NEVER WAS GIVEN A SINGLE CELL LIKE MEDICAL RECOMMENDED.
PAGE 12	LINE 23	MY HEALTH IS IN JEOPARDY BEING ON A-BLOCK AND ON B-SOUTH MY ASTHMA'S DONE GOT WORSE BEING ON A-BLOCK AND ON B-SOUTH HAS LONG HAS THEY SMOKED IN THIS JAIL MY HEALTH IS ALWAYS GOING TO BE IN JEOPARDY.
PAGE 14	LINE 7	NO
PAGE 14	LINE 16	MEDICAL RECOMMENDED I BE PUT IN A SINGLE CELL OR MOVED TO B-SOUTH, BUT NEITHER ONE OF THEM HAPPEN.
PAGE 14	LINE 18	I NEVER HAD A SINGLE CELL WHEN I WAS ON A-BLOCK.
PAGE 15	LINE 9	BUT BY ME BEING IN A CELL BY MYSELF, I NEVER HAD A SINGLE CELL WHY I WAS ON A-BLOCK.
PAGE 15	LINE 12	AND NOW AM I IN THE NON-SMOKING BLOCK MY ASTHMA'S DONE GOT EVEN WORSE.
PAGE 15	LINE 25	HERE ON B-SOUTH STILL ARE INDIVIDUALS THAT DO SMOKE.
PAGE 15	LINE 13	THEY DIDN'T DO ANYTHING TO MAKE THE NON-SMOKING BLOCK BETTER BECAUSE YOU STILL HAVE INMATES AND OFFICERS OVER HERE SMOKING WHEN THEY AIN'T SUPPOSED TO.
PAGE 15	LINE 20	SERGEANT RODRIGUEZ LET INMATES SMOKE ON THE NON-SMOKING BLOCK ONLY BECAUSE SERGEANT RODRIGUEZ AND THE UNIT MANAGER OF B-SOUTH TOLD ME ABOUT THEM PUTTING A STOP TO INMATES SMOKING.
PAGE 15	LINE 23	POT IN A CELL WITH A SMOKER, MY LIFE IS BEING JEOPARDIZED ON B-SOUTH JUST AS WELL HAS A-BLOCK.
PAGE 16	LINE 22	I WOULD HAVE TO AGREE WITH YOU BECAUSE INMATES STILL SMOKE OVER HERE ON B-SOUTH ALONE WITH SOME OF THE OFFICERS.
PAGE 16	LINE 24	INMATE WHO IS ON B-SOUTH NOW IS INMATES THAT SMOKE AND INMATES WHO DON'T REALLY WANT TO BE OVER HERE.
PAGE 17	LINE 4	MR. NEUHAUSER, I COULD ONLY SAY THAT ABOUT SOME OF THE INMATES.
PAGE 18	LINE 16	I SHOULD OF NEVER BEEN ON A-BLOCK WITH SMOKER'S KNOWING I HAVE ASTHMA'S AND CAN'T BREATH AND EVER BY ME BEING IN A CELL BY MYSELF I STILL WAS EXPOSED TO SECONDHAND SMOKE.
PAGE 18	LINE 18	AM ALSO GOING TO BE EXPOSED TO SECONDHAND SMOKE HAS LONG HAS I AM IN THIS JAIL.
PAGE 18	LINE 24	AND THEY DIDN'T EVEN PUT ME IN A SINGLE CELL THEY KEEP PUTTING ME IN WITH SMOKER'S.
PAGE 19	LINE 16	I NEVER WAS GIVING A SINGLE CELL.
PAGE 19	LINE 18	MR. ALLARD DIDN'T WANT ME TO HAVE A SINGLE CELL NOR DID HE WANT ME TO MOVE TO B-SOUTH.
PAGE 19	LINE 21	I NEVER HAD A SINGLE CELL I WAS JUST IN A CELL BY MYSELF ONLY BECAUSE MY CELLY MOVED OUT.
PAGE 21	LINE 19	ANY OTHER TIME I GO TO THE HOLE AND COME OUT MR. ALLARD DON'T HAVE ANY PROBLEM WITH ME COMING BACK TO THE BLOCK, THEN AGAIN HE WAS ONLY BEING NICE TO ME BECAUSE OF THE LAWSUIT I NEW HAD A.
PAGE 26	LINE 13	AND BY HAVING THE DOOR OPEN STILL DIDN'T HELP ME BREATH BETTER.
PAGE 26	LINE 10	AND BY ME BEING IN 102 I WAS EXPOSED TO SECONDHAND SMOKE EVEN MORE, PLUS THE VENTS BLOW DUST WHICH MADE IT EVEN HARDER FOR ME TO BREATH.
PAGE 27	LINE 4	I NEVER HAD A SINGLE CELL, MR. ALLARD HAD ME THINK I HAD A SINGLE CELL WHEN I REALLY NEVER DID.

I have inspected and read my deposition as captioned above and have listed all changes and corrections above, along with my reasons therefore.

**SIGNATURE:** Terrance Montague

**DATE:** May 30<sup>th</sup> 2001

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**TERRANCE MONTAGUE,** :  
Plaintiff :  
: : No. 1:CV-00-0895  
v. :  
: : (Magistrate Judge Smyser)  
**ROBERT W. MEYERS, et al.,** :  
Defendants :  
:

**DECLARATION OF ROBIN L. KERSTETTER**

Robin L. Kerstetter hereby declares under penalty of perjury in accordance with 28 U.S.C. §1746 that the following facts are true and correct to the best of his knowledge:

1. I am employed by the Pennsylvania Department of Corrections as the Unit Manager of B-block, a smoke-free block, at the State Correctional Institution at Rockview, and have held this position since the fall of 1999. I have been employed by the Department of Corrections for 25 years.
2. I am familiar with plaintiff and know him as a resident of B-block.
3. Plaintiff was transferred to B-block on April 30, 2001, and has resided on B-block since that time.
4. As long as plaintiff follows the non-smoking rules and regulations of B-block, a copy of which is attached hereto as Exhibit A, and any other general rule of inmate conduct, the administration of SCI-Rockview has no plans to transfer plaintiff from B-block.

JUL-05-01 THU 10:28

ATTORNEY GENERAL

FAX NO. 717 772 4526

P. 04/05

  
ROBIN L. KERSTETTER

Executed on the 9<sup>th</sup> day of July, 2001 at Bellefonte, Pennsylvania.

SUPT. ROCKVIEW

Fax: 814-355-6060

Apr 25 2001 15:37 P.02

**SCI ROCKVIEW**  
**CONTRACT FOR RESIDENCE ON SMOKE FREE UNIT**



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1. No smoking tobacco products will be allowed in any area of the unit, including cells.
2. Inmates residing on the smoke free unit will not be permitted to possess any smoking products on their person or in their cell. These items will be considered contraband.
3. Once assigned to the smoke free unit, the inmate will not voluntarily be transferred off the unit for at least six (6) months.
4. Violations of the above regulations will result in the issuing of misconducts, and removal from the unit.
5. Inmates removed from the smoke-free unit for violations will be returned to their previous unit unless determined otherwise by the unit team.
6. Inmates housed on the smoke free unit agree that smoking tobacco will not be purchased from the institution commissary.

I further understand and agree that all department and institution policies and procedures will remain in effect on the smoke-free unit.

TERRENCE MONTAGUE 02-2161  
 Inmate Name & Number (PRINT)

Robert L. Hark  
 Counselor Name (PRINT)

Terrence Montague 4-13-01  
 Inmate Signature & Date

Robert L. Hark 4-13-01  
 Counselor Signature & Date

41  
 50a

COMMONWEALTH'S  
 EXHIBIT  
 A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>TERRANCE MONTAGUE,</b>	:	
<b>Plaintiff</b>	:	
	:	<b>No. 1:CV-00-0895</b>
v.		:
	:	<b>(Magistrate Judge Smyser)</b>
<b>ROBERT W. MEYERS, et al.,</b>	:	
<b>Defendants</b>	:	

**DECLARATION OF JOHN M. ALLAR**

John M. Allar hereby declares under penalty of perjury in accordance with 28 U.S.C. §1746 that the following facts are true and correct to the best of his personal knowledge.

1. I am employed by the Pennsylvania Department of Corrections as the Unit Manager of Building A at the State Correctional Institution at Rockview (SCI-Rockview) and have held this position since January 2000. I have been employed by the Department of Corrections since 1982.

2. The Unit Manager is a management position at the correctional institution. As such, he or she administers and manages the operation of a cellblock of inmates. In so doing, the Unit Manager coordinates the treatment and security services provided by staff for the inmates housed in the cellblock. Part of that coordination of services includes the assignments of inmates to cells on the block and the transfer of inmates from one cell to another within the cellblock.

3. SCI-Rockview maintains a documentary tracking system in order to be able to access information on inmate housing assignments. These documents are generated and maintained in the normal course of business of the institution, and are routinely used by me and other institution staff in furtherance of our duties and responsibilities. The primary source document is known as the Inmate Cell History.

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4. I am familiar with plaintiff and know him from when he was a resident of A-block.

5. As the attached Inmate Cell History (Exhibit A) reveals, plaintiff was received at SCI-Rockview in May 1999. Between May 1999 and April 2001, plaintiff was housed in various locations, including A-block, the Restricted Housing Unit, the infirmary, the mental health unit and SCI-Waymart. This is revealed by the "Housing Status" column of Exhibit A.

6. With respect to the periods of time about which plaintiff complains in his complaint, Exhibit A hereto reveals that from 12/27/99 to 1/4/00, plaintiff was housed in cell 2017 on A-block. On 1/4/00, plaintiff was transferred to the R.H.U. From 2/3/00 to 2/29/00 plaintiff was housed in cell 5018 on A-block. On 2/29/00, plaintiff was moved to cell 5014, and then to cell 3018. From 4/26/00 to 5/3/00, plaintiff was housed in cell 3032 and then was moved to cell 1038.

7. Until plaintiff was transferred from A-block to B-block on April 30, 2001, the non-smoking block, every effort was made to house plaintiff with a non-smoker or a cellmate of his choice, within the constraints of trying to accommodate the housing need of over 400 inmates on the block.

8. While it is not apparent from available records whether plaintiff's cellmates during the relevant periods of time were smokers, I do recall that plaintiff requested changes in cellmates during February — April 2000 period of time and I attempted to accommodate plaintiff's requests.

9. At no time during this period was I advised by medical staff at SCI-Rockview that plaintiff had a medical restriction that mandated a non-smoking cellmate.

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10. Plaintiff would have been transferred to B-block, the non-smoking block, before April 2001 had he agreed to cooperate with the regulations of the non-smoking block, which included the non-possession of tobacco products and an agreement not to request transfer off the block for six (6) months.

11. Until April 2001, plaintiff would not agree to the conditions to reside on a non-smoking block.

12. In February 2001, plaintiff sent the attached Request to Staff Member, Exhibit B hereto, to the Unit Manager of the non-smoking block which stated:

Mr. Kerstetter: I would like to stay on A-block only because I'm in a single cell and don't have to worry about me getting a celly that smoke. [sic] Thank you very much. Terrance Montague

13. Plaintiff was in the Restricted Housing Unit ("RHU") from April 2 - April 30, 2001. On April 30, 2001 plaintiff was transferred to the non-smoking block because he had agreed to the regulations of the block.

  
JOHN M. ALLAR

Executed on the 9 day of July, 2001 at Bellefonte, Pennsylvania.

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P.02

COMPUTER SERVICES

INMATE BED ASSIGNMENT SYSTEM

RUN: GR501REPT

REMOTE PRINT TIME 9:38

INMATE CELL HISTORY

DATE: 6/29/2001

INMATE NUMBER: B22761

PAGE: 1

INMATE NAME: MONTAGUE, TERRANCE

LOC	BLDG	SECT	CELL DORM	BED NUM	HOU STAT	SEC LVL	CUST LVL	DATE IN	DATE OUT
GRE			HOLD						
029	B1	03	BUS					8/31/1998	5/19/1999
SMI			HOLD					5/19/1999	5/19/1999
016	V1	10	BUS					5/19/1999	5/19/1999
ROC			HOLD					5/19/1999	5/19/1999
ROC	D	A	3031	1		3	4	5/19/1999	7/12/1999
ROC	D	A	2022	2		3	4	7/12/1999	7/22/1999
ROC	D	A	1039	1	RHU	3	5	7/22/1999	11/29/1999
ROC	3	B	1001	1	INF	5	3	11/29/1999	11/29/1999
ROC	G	A	1001	1	RHU	5	5	11/29/1999	12/03/1999
ROC	G	B	1022	1	RHU	5	5	12/03/1999	12/06/1999
ROC	A	A	2017	1				12/06/1999	12/27/1999
ROC	D	A	1040	1	RHU	3	3	12/27/1999	1/04/2000
ROC	G	B	1024	1	RHU	3	5	1/04/2000	1/05/2000
ROC	A	A	2041	1		3	5	1/05/2000	2/01/2000
ROC			HOLD					2/01/2000	2/03/2000
ROC	A	A	5018	2		3	4	2/03/2000	2/03/2000
ROC	A	A	5018	1		3	4	2/03/2000	2/17/2000
ROC	A	A	5014	1		3	4	2/17/2000	2/29/2000
ROC	A	A	3018	1		3	4	2/29/2000	2/29/2000
ROC	D	A	1046	1	RHU	3	4	2/29/2000	4/04/2000
ROC	G	B	1012	2	RHU	3	5	4/04/2000	4/06/2000
ROC			HOLD					4/06/2000	4/18/2000
ROC	G	B	1012	1	RHU	5	5	4/18/2000	4/18/2000
ROC	A	A	3032	1		3	4	4/18/2000	4/26/2000
ROC	A	A	1038	1		3	4	4/26/2000	5/03/2000
ROC	A	A	1032	1		3	4	5/03/2000	5/04/2000
ROC			HOLD					5/04/2000	5/23/2000
ROC	G	B	1011	2	RHU	5	5	5/23/2000	5/23/2000
ROC			HOLD					5/23/2000	6/13/2000
ROC	G	B	1011	1	RHU	5	5	6/13/2000	6/13/2000
ROC	A	A	1037	1		3	4	6/13/2000	6/28/2000
ROC	D	A	1039	1	RHU	3	5	6/28/2000	10/05/2000
ROC	G	B	1001	1	RHU	3	5	10/05/2000	10/10/2000
ROC	A	A	1042	1	RHU	5	5	10/10/2000	11/03/2000
ROC	3	C	1012	1	MHU	3	4	11/03/2000	12/26/2000
016	V1	04	BUS					12/26/2000	12/27/2000
SMI			HOLD					12/27/2000	12/27/2000
010	V1	02	BUS					12/27/2000	12/27/2000
WAM			HOLD					12/27/2000	12/27/2000
WAM	C	2	1005	1	ICU	2	4	12/27/2000	12/27/2000
WAM	C	2	1013	1	ICU	2	4	12/27/2000	12/27/2000
WAM	C2	01	BUS					12/27/2000	1/11/2001
ROC			HOLD					1/11/2001	1/11/2001
ROC	A	A	1002	1		3	4	1/11/2001	1/11/2001
ROC	A	A	1019	1		3	4	1/11/2001	2/23/2001
ROC	D	AC	1036	1	RHU	3	5	2/23/2001	3/15/2001
ROC	G	B	1010	2	RHU	5	5	3/15/2001	3/15/2001
								3/15/2001	3/19/2001

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REMOTE PRINT TIME 9:  
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Jun 29 '01 12:13

P.03

INMATE BED ASSIGNMENT SYSTEM  
INMATE CELL HISTORY  
INMATE NUMBER: BZ2761

RUN: GR501RPT  
DATE: 6/29/2001  
PAGE: 2

INMATE NAME: MONTAGUE, TERRANCE

LOC	BLDG	SECT	CELL	BED	HOUS	SEC	CUST			
---	---	---	---	DORM	NUM	STAT	LVL	LVL	DATE IN	DATE OUT
ROC			HOLD							
ROC	G	A	1017	1	RHU	5	5	5	3/19/2001	4/02/2001
ROC	B	A	1041	1		3	4	4	4/02/2001	4/30/2001
									CURRENT	

SUPT. ROCKVIEW

Fax: 814-355-6060

Apr 25 2001 10:39

P.02

FEB 23 2001

at Rockview  
 Supt's Assistant's Office  
 INMATE'S REQUEST TO STAFF MEMBER

COMMONWEALTH OF PENNSYLVANIA  
 DEPARTMENT OF CORRECTIONS

## INSTRUCTIONS

Complete Items Number 1-7. If you follow instructions in preparing your request, it can be disposed of more promptly and intelligently.

1. TO: (NAME AND TITLE OF OFFICER)

KESTETTER

2. DATE

2-23-01

3. BY: (INSTITUTIONAL NAME AND NUMBER)

TELLANCE MONTAGUE #BZ-2761

4. COUNSELOR'S NAME

5. WORK ASSIGNMENT

KITCHEN

6. QUARTERS ASSIGNMENT

A-102

7. SUBJECT: STATE COMPLETELY BUT BRIEFLY THE PROBLEM ON WHICH YOU DESIRE ASSISTANCE. GIVE DETAILS.

Mr. KESTETTER,

I would like to stay on A-block only because I am in a single cell and don't have to worry about me getting any of that smoke.

THANK YOU  
 VERY MUCH  
 I RECOMMEND APPROVAL

8. DISPOSITION: (DO NOT WRITE IN THIS SPACE)

RECEIVED / J. L. C. 2/27/01

 TO DC-14 CAR ONLY TO PC

STAFF MEMBER

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

TERRANCE MONTAGUE, :  
Plaintiff :  
: No. 1:CV-00-0895  
v. :  
: (Magistrate Judge Smyser)  
ROBERT W. MEYERS, et al., :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General  
for the Commonwealth of Pennsylvania, Office of Attorney General, hereby  
certify that on July 10, 2001, I caused to be served a true and correct copy of the  
foregoing document **Exhibits in Support of Defendants' Motion for Summary  
Judgment** by depositing it in the United States mail, first-class postage prepaid to  
the following:

Terrance Montague, BZ-2761  
SCI-Rockview  
Box A  
Bellefonte, PA 16823-0820

  
\_\_\_\_\_  
GREGORY R. NEUHAUSER  
Senior Deputy Attorney General